

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN

DEAN MIDDLETON,

Plaintiff,

Case No.

v

Hon.

OX ENGINEERED PRODUCTS, LLC,
a foreign limited liability company,

Defendant.

WILLIAM F. PIPER, PLC
William F. Piper (P38636)
Attorney for Plaintiff
1611 W. Centre Ave., Ste. 209
Portage, MI 49024
(269) 321-5008
wpiper@wpiperlaw.com

STARR, BUTLER, ALEXOPOULOS & STONER, PLLC
Kay Rivest Butler (P41651)
Attorneys for Defendant
20700 Civic Center Dr., Ste. 290
Southfield, MI 48076
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DEFENDANT'S NOTICE OF REMOVAL

TO: Judges of the United States District Court for the Western District of Michigan

Defendant OX Engineered Products, LLC ("Defendant"), through its attorneys, Starr, Butler, Alexopoulos & Stoner, PLLC, files this Notice of Removal of the above-captioned case from the Circuit Court for the County of St. Joseph for the State of Michigan to the United States District Court for the Western District of Michigan, on the basis of federal question jurisdiction, and in support thereof, states as follows:

1. On or about March 5, 2021, Plaintiff Dean Middleton commenced an action against Defendant, Case No. 21-157-CZ, in the Circuit Court for the County of St. Joseph. A copy of the Summons and Complaint is attached as Ex. A.

2. Defendant first received notice of this action on March 18, 2021, when served with the Summons and Complaint. This Notice of Removal is being filed within thirty (30) days of the date that Defendant first received notice of this action pursuant to 28 U.S.C. § 1446(b).

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3. Plaintiff's Complaint alleges claims Race Discrimination under 42 U.S.C. § 1981 and 42 U.S.C. § 1981a.

4. Based on the allegations in Plaintiff's Complaint which include an alleged violation of a federal statute, this Court has original federal jurisdiction of this civil action under the provisions of 28 U.S.C. § 1331 and this civil action may be removed to this Court by Defendant pursuant to 28 U.S.C. § 1441. Moreover, this federal court also has supplemental jurisdiction over Plaintiff's related state-law claims for (1) alleged Worker's Compensation Retaliation MCL § 418.310(13) and Michigan common law and (2) race discrimination under Elliott Larsen Civil Rights Act, MCL § 37.2101 et seq. (*see* Ex. A), pursuant to 28 U.S.C. § 1367(a) (Supplemental Jurisdiction).

5. Copies of all process and pleadings served upon Defendant are attached to this Notice of Removal in accordance with 28 U.S.C. § 1446(a) (Ex. A).

6. Concurrent with the filing of this Notice of Removal, Defendant is providing notice to all parties and the Clerk of the Circuit Court for the County of St. Joseph pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Defendant OX Engineered Products, LLC gives notice that the above-described action pending in the Circuit Court for the County of St. Joseph, State of Michigan, is being removed therefrom to this Honorable Court.

Respectfully submitted,

STARR, BUTLER, ALEXOPOULOS & STONER, PLLC

By: s/ Kay Rivest Butler
Kay Rivest Butler (P41651)
Attorneys for Defendant
20700 Civic Center Dr., Ste. 290
Southfield, MI 48076
(248) 864-4932
kbutler@starrbutler.com

Dated: April 7, 2021

{00083277.DOCX}

PROOF OF SERVICE

The undersigned says that on April 7, 2021, she has caused to be served a copy of **Notice of Removal** and this **Proof of Service** via email and first class mail upon all attorneys of record.

I declare that the above statements are true and correct to the best of my knowledge, information and belief.

/s/ Kiersten Plane

Kiersten Plane

EXHIBIT A

(S) 3-18-21

Approved, SCAO		Original - Court 1st copy - Defendant	2nd copy - Plaintiff 3rd copy - Return
STATE OF MICHIGAN JUDICIAL DISTRICT JUDICIAL CIRCUIT COUNTY PROBATE	SUMMONS	CASE NO. 21-157 - CZ	
Court address PO Box 189 Centreville MI, 49032		Court telephone no. 269-383-8837	
Plaintiff's name(s), address(es), and telephone no(s). Dean Middleton, an individual		Defendant's name(s), address(es), and telephone no(s). Ox Engineered Products, LLC, a corporation c/o David S. Ulmer, Resident Agent 22260 Haggerty Rd., Ste. 365 Northville, MI 48167	
Plaintiff's attorney, bar no., address, and telephone no. William F. Piper (P28636) William F. Piper, PLC 1611 W. Centre Ave., Ste. 209 Portage, MI 49024 (269) 321-5008		Assigned to HON PAUL STUTESMAN	

Instructions: Check the items below that apply to you and provide any required information. Submit this form to the court clerk along with your complaint and, if necessary, a case inventory addendum (form MC 21). The summons section will be completed by the court clerk.

Domestic Relations Case

- ☐ There are no pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.
- ☐ There is one or more pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint. Attached is a completed case inventory (form MC 21) listing those cases.
- ☐ It is unknown if there are pending or resolved cases within the jurisdiction of the family division of the circuit court involving the family or family members of the person(s) who are the subject of the complaint.

Civil Case

- ☐ This is a business case in which all or part of the action includes a business or commercial dispute under MCL 600.8035.
- ☒ There is no other pending or resolved civil action arising out of the same transaction or occurrence as alleged in the complaint.
- ☐ A civil action between these parties or other parties arising out of the transaction or occurrence alleged in the complaint has been previously filed in ☐ this court, ☐ _____ Court, where it was given case number _____ and assigned to Judge _____.
- The action ☐ remains ☐ is no longer pending.

Summons section completed by court clerk.

SUMMONS

NOTICE TO THE DEFENDANT: In the name of the people of the State of Michigan you are notified:

1. You are being sued.
2. **YOU HAVE 21 DAYS** after receiving this summons and a copy of the complaint to file a written answer with the court and serve a copy on the other party or take other lawful action with the court (28 days if you were served by mail or you were served outside this state).
3. If you do not answer or take other action within the time allowed, judgment may be entered against you for the relief demanded in the complaint.
4. If you require special accommodations to use the court because of a disability or if you require a foreign language interpreter to help you fully participate in court proceedings, please contact the court immediately to make arrangements.

Issue date March 5, 2021	Expiration date* June 4, 2021	Court clerk Lindsay Oswald
<small>*This summons is invalid unless served on or before its expiration date. This document must be sealed by the seal of the court.</small>		Deputy

MC 01 (8/18) **SUMMONS**

MCR 1.109(D), MCR 2.102(B), MCR 2.104, MCR 2.105

SUMMONS

Case No. _____

PROOF OF SERVICE

TO PROCESS SERVER: You are to serve the summons and complaint not later than 91 days from the date of filing or the date of expiration on the order for second summons. You must make and file your return with the court clerk. If you are unable to complete service you must return this original and all copies to the court clerk.

CERTIFICATE / AFFIDAVIT OF SERVICE / NONSERVICE☐ **OFFICER CERTIFICATE**

OR

☐ **AFFIDAVIT OF PROCESS SERVER**

I certify that I am a sheriff, deputy sheriff, bailiff, appointed court officer, or attorney for a party (MCR 2.104[A][2]), and that: (notarization not required)

Being first duly sworn, I state that I am a legally competent adult who is not a party or an officer of a corporate party, and that: (notarization required)

☐ I served personally a copy of the summons and complaint.

☐ I served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint, together with _____

List all documents served with the summons and complaint

_____ on the defendant(s):

Defendant's name	Complete address(es) of service	Day, date, time

☐ I have personally attempted to serve the summons and complaint, together with any attachments, on the following defendant(s) and have been unable to complete service.

Defendant's name	Complete address(es) of service	Day, date, time

I declare under the penalties of perjury that this proof of service has been examined by me and that its contents are true to the best of my information, knowledge, and belief.

Service fee \$	Miles traveled	Fee \$	
Incorrect address fee \$	Miles traveled	Fee \$	TOTAL FEE \$

Signature _____

Name (type or print) _____

Title _____

Subscribed and sworn to before me on _____ Date _____ County, Michigan.

My commission expires: _____ Date _____ Signature: _____
Deputy court clerk/Notary public

Notary public, State of Michigan, County of _____

ACKNOWLEDGMENT OF SERVICE

I acknowledge that I have received service of the summons and complaint, together with _____ Attachments

_____ on
Day, date, time

Signature _____ on behalf of _____

STATE OF MICHIGAN
IN THE ST. JOSEPH COUNTY CIRCUIT COURT

DEAN MIDDLETON,
an individual,

Plaintiff,

v

OX ENGINEERED PRODUCTS, LLC.,
a foreign limited liability company,

Defendant.

Case

No.:

21-157 CZ

Hon.

Assigned to
KIM PAUL STUTESMAN

WILLIAM F. PIPER, PLC
William F. Piper (P38636)
Attorney for Plaintiff
1611 W. Centre Avenue, Suite 209
Portage, MI 49024
(269) 321-5008
wpiper@wpiperlaw.com

COMPLAINT

The plaintiff Dean Middleton, by and through his attorney William F. Piper, PLC, for his complaint, states as follows:

JURISDICTIONAL ALLEGATIONS

1. The plaintiff Dean Middleton is a white man who resides in Branch County, State of Michigan, and he has resided therein at all times relevant to this complaint.
2. The defendant Ox Engineered Products, LLC. is a foreign limited liability company that did business in the Village of Constantine, County of St. Joseph, State of Michigan, at all times relevant to this complaint.

3. This matter arises out of Mr. Middleton's employment by the defendant and its termination of his employment by it on October 15, 2020.
4. This lawsuit arises in part under the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et. seq.*
5. This lawsuit involves damages to the plaintiff that exceed \$25,000.00.

COMMON ALLEGATIONS

6. The plaintiff restates and realleges as though fully set forth herein paragraphs 1-5 of this Complaint.
7. In mid August 2020 Mr. Middleton started his employment with the defendant through Advance Employment.
8. At all times that Mr. Middleton worked for the defendant he did a good job for it.
9. On October 2, 2020 Mr. Middleton sprained his ankle and bruised his back at work.
10. Mr. Middleton then indicated that he wanted to fill out an injury report.
11. Mr. Middleton's tour boss Reggie, who is African American, then took him into a break room and told him that he was on his probationary period and that if he filled out an injury report the defendant would fire him;.
12. The tour boss Reggie told Mr. Middleton to suck it up.
13. About two hours later Mr. Middleton began to feel a lot of pain..
14. Mr. Middleton then went to the other tour boss and told him that he wanted to file an injury report.
15. Mr. Middleton then filed the injury report.
16. Mr. Middleton then took 4 days off because of his injury.
17. Mr. Middleton then came back to work on restrictions.

18. When Mr. Middleton came back to work Reggie told him he should have been a man and should not have filed an injury report.
19. The defendant then made Mr. Middleton a trainer for a week.
20. Reggie then brought him into an office and told Mr. Middleton incorrectly that he was doing his lifting, which was limited to 15 pounds, incorrectly.
21. Reggie told Mr. Middleton to work outside of his restrictions.
22. Mr. Middleton objected to Reggie's instructions to work outside of his restrictions.
23. On the following Monday Reggie removed Mr. Middleton from the training position and put him in a janitorial position, in retaliation against him because he had filed an injury report and because he had objected to working outside of his restrictions.
24. On Wednesday Mr. Middleton asked to be hired as a regular defendant employee.
25. Reggie told employees of the defendant before he had sent Mr. Middleton to janitorial that had terminated 9 honkeys and he was about to terminate another one.
26. On Thursday October 15, 2020 the defendant terminated the employment of Mr. Middleton.
27. As a result of the defendant's termination of his employment by it Mr. Middleton has suffered and will continue to suffer a loss of income and benefits, emotional distress, a loss of enjoyment of life and other damages.

COUNT I- WORKER'S COMPENSATION RETALIATION

28. The plaintiff restates and realleges as though fully set forth herein paragraphs 1-27 of this Complaint.
29. The defendant terminated Mr. Middleton's employment in part because he had exercised his rights under the Worker's Disability Compensation Act.

30. As a result of the discriminatory and retaliatory termination set forth above, Mr. Middleton has suffered and will continue to suffer the damages set forth above.

31. This claim is actionable under MCL 418.301 (13) and the common law.

WHEREFORE, the plaintiff requests a judgment against the defendant that would include appropriate equitable relief, including reinstatement or front pay; appropriate legal relief, including compensation for the loss of income and benefits that he suffered and that he will continue to suffer in the future, compensation for all intangible damages that he suffered and that he will continue to suffer in the future; and all recoverable interest, attorney's fees, and any other relief this court deems fair and just.

COUNT II - RACE DISCRIMINATION

32. The plaintiff restates and realleges as though fully set forth herein paragraphs 1 through 31 of this complaint.

33. The defendant terminated Mr. Middleton's employment by it in part because of his race.

34. As a result of the discriminatory termination Mr. Middleton has suffered and will continue to suffer the damages set forth above.

41. This claim is actionable under 42 U.S.C. §1981, 42 U.S.C. §1981 a, , and the Elliott-Larsen Civil Rights Act, MCL 37.2101 et. seq.

WHEREFORE, the plaintiff requests a judgment against the defendant that would include appropriate equitable relief, including reinstatement or front pay; appropriate legal relief, including compensation for the loss of income and benefits he suffered and that he will continue to suffer in the future, compensation for all intangible damages that he suffered and that he will continue to suffer in the future; punitive damages; and all recoverable interest,

attorney's fees, and any other relief this court deems fair and just.

Dated: March 3, 2021

WILLIAM F. PIPER, PLC.
Attorney for Plaintiff

By:



William F. Piper (P38636)

BUSINESS ADDRESS:

1611 W. Centre Avenue, Suite 209
Portage, MI 49024
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